

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-004380

11/07/2003

HONORABLE KENNETH L. FIELDS

CLERK OF THE COURT
D. Whitford
Deputy

FILED: 11/10/2003

ARIZONA MINORITY COALITION FOR FAIR
RED, et al.

PAUL F ECKSTEIN

v.

ARIZONA INDEPENDENT REDISTRICTING
COMMI, et al.

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RULING

The Court has under advisement the following Motions:

1. The Arizona Independent Redistricting Commission's (IRC) Motion for Summary Judgment against the Arizona Minority Coalition for Fair Redistricting (Legislative Plaintiffs),
2. The Arizona Independent Redistricting Commission's Motion for Summary Judgment against the plaintiff-intervener City of Flagstaff (Flagstaff),
3. Mary Ann Arvizu, et al's (Congressional Plaintiffs) Motion for Summary Judgment against the IRC,
4. Arizona Minority Coalition for Fair Redistricting's Motion for Summary Judgment against the IRC,
5. Flagstaff's Motion for Summary Judgment against the IRC.

After consideration of the pleadings and the arguments of all counsel, including counsel for intervenors,

IT IS ORDERED denying all the motions listed above to the extent stated below. The Court decides this case on the basis of the Arizona Constitution and decisions of the appellate courts of Arizona but looks to decisions of constitutional law by the U.S. Courts for guidance in interpretation.

The Court agrees with the IRC that, under Article IV, Part 2, Section 1, of the Arizona Constitution, it has a legislative function. The IRC does not, however, have unfettered discretion to create voting districts as it urges in its pleadings. It must exercise its discretion within the parameters of Section 1 (14) of Article IV, Part 2, and other provisions of the Arizona Constitution. Additionally the IRC's interpretation of its constitutional duties, while given due deference as the decisions of a constitutional body, are subject to review and ultimate determination by the Courts. This is not a novel concept in American jurisprudence, including this state. Ruiz v. Hull, 191 Ariz. 448 (1999).

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As noted earlier in this Court's ruling on the Navajo Nation's Motion for Summary Judgment, the Court is applying the Strict Scrutiny Standard in this case since the right to vote is a core constitutional right. The IRC apparently agrees that the right to vote is a fundamental right, but argues that redistricting plans do not implicate this fundamental right. The Court disagrees. The ability to effectively exercise the right to vote is part of the fundamental right. "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." [Reynolds v. Sims](#), 377 U.S. 533, 555, (1964) (Emphasis added); see also, [Bush v. Gore](#), 531 U.S. 98, 104 (2000) and [Charfouros v. Board of Elections](#), 249 F.3d 941 (9th Cir. 2001). Redistricting plans that do not comport with law clearly have the potential of "debasing or diluting" the weight of a person's vote thus implicating this fundamental right. The right to vote in congressional and legislative elections is a core constitutional right under Article VIII of the Arizona Constitution.

Plaintiffs allege that defendant IRC did not exercise or properly exercise its non-discretionary legislative function under Article IV, Part 2, Section 1, (14) which denied them equal protection. Since the IRC actions in creating legislative and congressional districts involve a fundamental right, the burden is on the IRC to convince the Court it properly exercised its limited legislative function here. While plaintiffs have the initial burden of producing some evidence to support their allegations, the burden is on the IRC to convince the Court of the constitutionality of the creation of its legislative and congressional districts. [Ruiz v. Hull](#), 191 Ariz. 448, 441 (1999).

Plaintiffs also seek summary judgment because the IRC did not formulate definitions and standards that it could uniformly apply in the creation of voting districts. According to plaintiffs, to not do so under circumstances involving a fundamental right such a voting, denies equal protection under Arizona Constitution. Plaintiffs rely on [Bush v. Gore](#), 531 U.S. 98, 104 (2000) for their position. The U.S. Supreme Court there found that under the recurring circumstances before it, the lack of specific standards created a problem in ensuring equal application in the method of counting votes. It found that the circumstances there made necessary the formulation of uniform rules. Without the development of supporting facts, this Court cannot now draw such a conclusion in this case. This issue will have to abide trial.

The Court has jurisdiction to order the IRC to perform its constitutionally mandated duty if, after consideration of the evidence presented, it finds that the IRC did not comply with constitutional requirements. It may also enjoin it or the Secretary of State from performing an unconstitutional act. [Ruiz v. Hull](#), supra, and [Roosevelt Elementary School District 66 v. Bishop](#), 179 Ariz. 233 (1994).

The IRC also raises the issue of standing by the plaintiffs, especially the City of Flagstaff, to pursue the equal protection claim. The Court finds that plaintiffs have standing to bring their

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actions. Standing is not jurisdictional in Arizona, but one of judicial restraint that can be waived under appropriate circumstances. A party has standing under Arizona law if the party possesses an interest in the outcome of the litigation. Alliance Marana v. Gloseclose, 191 Ariz. 287 (App.1998). The Court will grant standing if there is no danger of merely rendering an advisory opinion, the case is not moot, and that the issues will be fully developed. City of Tucson v. Pima County, 199 Ariz. 509 (App. 2001) and City of Tucson v. Woods, 191 Ariz. 523,526 n.2 (App.1998). This Court is confident that the parties here are true adversaries and will fully develop all contested issues.

The Court cannot decide as a matter of law that any movant is entitled to judgment since there are many disputed issues of material fact precluding summary judgment. For example, there is a dispute whether the IRC properly applied the “competitiveness” goal in the Arizona constitution, or whether it applied this goal at all. From the recent pleadings it also appears that there is now a new factual dispute whether the IRC violated Article IV, Part 2, Section 1 (15), Arizona Constitution, by identifying or considering places of residence of incumbents in the creation of the voting districts.

The motions for summary judgment are denied.